

House File 305 - Introduced

HOUSE FILE _____
BY HEATON

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to notice of claim and certificate of merit
2 requirements in a civil action for personal injury or death
3 against a health care provider.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1457YH 82
6 rh/je/5

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1 1 Section 1. NEW SECTION. 147.140 NOTICE OF CLAIM AND
1 2 CERTIFICATE OF MERIT REQUIREMENT.
1 3 1. At least thirty days prior to filing a civil action for
1 4 personal injury or wrongful death against a licensed health
1 5 care provider, based upon the alleged negligence of the
1 6 licensed health care provider in the practice of that
1 7 profession, a plaintiff shall serve by certified mail, return
1 8 receipt requested, a notice of claim upon the licensed health
1 9 care provider. The notice of claim shall include a statement
1 10 of the theory of liability upon which the cause of action is
1 11 based and include a list of all persons to whom notices have
1 12 been sent, together with a certificate of merit, if necessary,
1 13 as specified in subsection 2.
1 14 2. a. The certificate of merit shall be signed under oath
1 15 by an expert who, in the three years preceding the allegedly
1 16 negligent act, either practiced or instructed in the same or
1 17 substantially similar field of medicine as the defendant.
1 18 b. The certificate of merit shall contain information
1 19 relating to all of the following:
1 20 (1) The expert's familiarity with the applicable standard
1 21 of care.
1 22 (2) The expert's qualifications.
1 23 (3) The expert's statement that the appropriate standard
1 24 of care was breached by the health care provider named in the
1 25 complaint.
1 26 (4) The expert's statement of the actions that the health
1 27 care provider should have taken or failed to take to have
1 28 complied with the standard of care.
1 29 (5) A statement of the manner in which the breach of the
1 30 standard of care was the cause of the injury alleged in the
1 31 complaint.
1 32 c. A separate certificate of merit shall be completed for
1 33 each defendant named in the notice of claim.
1 34 d. If a plaintiff or plaintiff's counsel asserts in good
1 35 faith that the plaintiff has insufficient time to obtain a
2 1 certificate of merit prior to the expiration of the period of
2 2 limitation in subsection 1, the plaintiff shall provide notice
2 3 of intent to provide a certificate of merit to the defendant
2 4 within sixty days of the date the defendant receives the
2 5 notice of the claim.
2 6 3. Notwithstanding subsection 2, if a plaintiff believes
2 7 that a certificate of merit is not necessary because the
2 8 plaintiff's cause of action against a health care provider is
2 9 based upon a well-established legal theory of liability which
2 10 does not require expert testimony supporting a breach of the
2 11 applicable standard of care, the plaintiff shall file a
2 12 statement setting forth the basis for the alleged liability of
2 13 the health care provider in lieu of the certificate of merit.
2 14 4. Except as otherwise provided in this section, the
2 15 applicable statute of limitations in a civil cause of action
2 16 against a health care provider upon whom a notice of claim is
2 17 served pursuant to this section shall be tolled from the date
2 18 the notice of claim is mailed.
2 19 5. If the plaintiff fails to provide a notice of claim and

2 20 a certificate of merit, or a statement of the legal theory
2 21 upon which the claim is based, the claim shall be dismissed
2 22 with prejudice.

2 23 6. For purposes of this section, "health care provider"
2 24 means a physician or surgeon, osteopath, osteopathic physician
2 25 or surgeon, dentist, podiatric physician, optometrist,
2 26 pharmacist, chiropractor, or nurse licensed in this state, a
2 27 hospital licensed pursuant to chapter 135B, or a health care
2 28 facility licensed pursuant to chapter 135C.

2 29 EXPLANATION

2 30 This bill relates to notice of claim and certificate of
2 31 merit requirements in a civil action for personal injury or
2 32 death against a health care provider.

2 33 The bill provides that at least 30 days prior to filing a
2 34 civil action for personal injury or wrongful death against a
2 35 health care provider, based upon the alleged negligence of the
3 1 licensed health care provider in the practice of that
3 2 profession, a plaintiff shall serve by certified mail, return
3 3 receipt requested, a notice of claim upon the licensed health
3 4 care provider. The notice of claim shall include a statement
3 5 of the theory of liability upon which the cause of action is
3 6 based and include a list of all persons to whom notices have
3 7 been sent, together with a certificate of merit.

3 8 The bill requires that the certificate of merit shall meet
3 9 certain requirements and specifies certain information that a
3 10 qualified expert who provides information in the certificate
3 11 of merit shall provide. The bill provides that a separate
3 12 certificate of merit shall be completed for each defendant
3 13 named in the complaint, and that if a plaintiff or plaintiff's
3 14 counsel asserts in good faith that the plaintiff has
3 15 insufficient time to obtain a certificate of merit prior to
3 16 the expiration of the 30-day limitation period, the plaintiff
3 17 shall provide notice of intent to provide a certificate of
3 18 merit to the defendant within 60 days of the date the
3 19 defendant receives the notice of the claim. If a plaintiff
3 20 believes that a certificate of merit is not necessary because
3 21 the plaintiff's cause of action against a health care provider
3 22 is based upon a well-established legal theory of liability
3 23 which does not require expert testimony supporting a breach of
3 24 the applicable standard of care, the plaintiff shall file a
3 25 statement setting forth the basis for the alleged liability of
3 26 the health care provider in lieu of the certificate of merit.

3 27 The bill further provides that the applicable statute of
3 28 limitations in a civil cause of action against a health care
3 29 provider upon whom a notice of claim is served shall be tolled
3 30 from the date the notice of claim is mailed. In addition, if
3 31 the plaintiff fails to provide a notice of claim and a
3 32 certificate of merit, or a statement of the legal theory upon
3 33 which the claim is based, the claim shall be dismissed with
3 34 prejudice.

3 35 For purposes of the bill, "health care provider" means a
4 1 physician or surgeon, osteopath, osteopathic physician or
4 2 surgeon, dentist, podiatric physician, optometrist,
4 3 pharmacist, chiropractor, or nurse licensed in Iowa, a
4 4 hospital licensed pursuant to Code chapter 135B, or a health
4 5 care facility licensed pursuant to Code chapter 135C.

4 6 LSB 1457YH 82

4 7 rh:nh/je/5